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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045173
Party	Plaintiff Glenn Danzig
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Submission	Stipulated/Consent Motion to Extend
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Attachments	14 03 21 Motion to consolidate.pdf(35509 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration Nos.  
2,793,533, 2,634,215 and 2,735,848 Issued on  
December 16, 2003, October 12, 2002 and April 22, 2003, respectively

Glenn Danzig.

Petitioner,

v.

Cycloplan Music, Inc.

Registrant.

Cancellation No. 92045173

Mark: MISFITS

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION FOR CONSOLIDATION OF MULTIPLE INTER PARTE**  
**PROCEEDINGS, TO RESET PRETRIAL AND TRIAL DATES, AND TO**  
**EXTEND WITH CONSENT**

To the Commissioner for Trademarks:


Petitioner, Glenn Danzig (“Danzig”), by and through his attorney, and pursuant to 37 CFR § 2.116(a) , hereby moves to (1) consolidate the above captioned cancellation proceeding (the “cancellation proceeding”) with other inter parte proceedings involving the identical parties; (2) reset the dates to run concurrently for all proceedings using the updated procedures for matters filed after November 1, 2007; (3) extend the dates for doing so approximately 2 months based on the schedules in place in the proceedings sought to be added to this cancellation proceeding. In support of this motion (“petitioner’s motion”), Danzig states as follows:

### **BRIEF IN SUPPORT OF MOTION**

1. All proceedings that Danzig asks to be consolidated pertain primarily to ancillary merchandising marks associated with the band MISFITS which initially performed during the 1970's to 1980's. Danzig hereby moves to consolidate the above captioned cancellation proceedings with presently pending cancellation number 92/050,014 and opposition numbers 91/182,881 and 91/184,044 for purposes of trial and pretrial proceedings.

2. In the above captioned proceeding, Danzig seeks to cancel three (3) trademark registrations of Cyclopien Music, Inc. (“Cyclopien”) for the mark MISFITS. Cyclopien has also applied for two additional registrations for the mark

MISFITS against which the Danzig has filed opposition proceedings, opposition

numbers 91/182,881 (word mark) and 91/184,044 (stylized). 

3. In addition, Danzig has also filed a cancellation proceeding against a design mark of which consumers associate the Misfits as the source, referred to as the “Fiend Skull”, cancellation no. 92/050,014 shown immediately below:



4. Thus, there are currently 4 proceedings involving 6 applications or registrations involving the identical parties. All but one application/registration involves some variation of the mark MISFITS. That one application involves the “Fiend Skull” design mark, and although not involving the word MISFITS, is a misfits-related mark. The Fiend Skull cancellation proceeding involves the same parties, facts and issues as the matters concerning the “MISFITS” marks.

5. Each of the proceedings question the validity of the applications and registrations on the grounds that the wrong applicant/registrant entity is identified and all proceedings are contested on the grounds of lack of use or abandonment. Danzig in each proceeding contends that registrant Cycloplan

Music, Inc. (“Cyclopiian”) filed the applications aware that it was not the owner of exclusive rights in the marks, and inconsistent with Danzig’s ownership rights.

6. Cyclopiian has applied for federal registrations of the Trademarks MISFITS as a word mark and in a stylized form for various classes of goods and services in its own name and has obtained federal registrations for the trademark MISFITS in other classes again in its own name. Danzig has filed a notice of opposition to application number 76605840 for MISFITS (stylized) in class 25, a notice of Opposition to application number 76605515 for MISFITS (word mark) in class 25 and filed a petition for cancellation for registration number 2,770,984 for the Misfits-related “Fiend Skull” design mark.

7. Consolidation will avoid cluttering the Trademark Office files, avoid the necessity of duplicative submissions of potentially bulky evidence, facilitate consistent decisions on identical issues by the TTAB, and conserve judicial resources of the TTAB in rendering its decisions. Thus, consolidation would help avoid unnecessary costs and further delay by the parties and of the TTAB.

8. 37 CFR section 2.116(a) provides that procedure and practice in inter party trademark proceedings shall be governed by the Federal Rules of Civil Procedure whenever applicable and appropriate and except as otherwise provided. Federal Rule of Civil Procedure 42(a) provides that when actions involving a common question of law or fact are pending before the court, that court may order all of the actions consolidated.

9. The rules of practice and trademark cases as set forth in 37 CFR, part 2 do not otherwise provide for motions to consolidate pending proceedings.

10. Reading Federal Rule of Civil Procedure 42(a) in light of 37 CFR section 2.116(a), a motion to consolidate the four actions is proper and should be granted.

11. Danzig further requests that pretrial and trial dates be reset by approximately 2 months based on the added proceedings, to cause the dates in all of the proceedings to run concurrently and to accommodate the parties' schedules, in accordance with the updated procedures which were introduced after the filing of the instant proceeding.

12. It has been difficult to coordinate deposition dates for both parties since settlement talks broke down due to the parties' touring schedules and other commitments, and the commitments of counsel. The parties have preliminarily agreed to a deposition schedule that takes into consideration Danzig's counsel's business travel commitments and the schedule of the current concert tour of Cyclopien's principal, which ends of April 2014. The undersigned will be out of the country during the middle of May during the INTA meeting. Danzig's deposition is scheduled to proceed on April 29, 2014. The parties have agreed that all depositions may be used as testimonial depositions in addition to for purposes of discovery, contingent upon Cyclopien providing dates certain for its depositions.

13. Danzig acknowledges the prior order of the TTAB indicating that there would be no further suspension absent extraordinary circumstances. The date extension is not being proposed for purposes of settlement but to complete discovery and attend to trial matters in an orderly manner. The dates for discovery have closed in connection with all proceedings, however, the parties have agreed to informally conduct discovery after the discovery cutoff and use discovery depositions, if desired for testimonial depositions to the extent so designated.

14. Suggested dates for resetting are:

Plaintiff's pretrial disclosures: June 2, 2014

Plaintiff's 30-day Trial Period Ends: July 17, 2014

Defendant's Pretrial Disclosures: August 1, 2014

Defendant's 30-day Trial Period Ends: September 16, 2014

Plaintiff's Rebuttal Disclosures: September 30, 2014

Plaintiff's 15-day Rebuttal Period Ends: October 30, 2014

15. The parties are currently in the midst of pretrial and trial procedures involving these matters. Efforts to resolve the dispute among the parties have been unsuccessful. Danzig also is considering the filing of a lawsuit against defendant Cycloplan. Should he do so, Danzig and/or Cycloplan may seek to suspend proceedings pending the outcome of that litigation.

Danzig has secured the express consent of all other parties to this proceeding for the consolidation of proceedings and the proposed extension requested herein.

Respectfully,

/s/

Dated: March 21, 2014

By: \_\_\_\_\_  
PAUL D. SUPNIK  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 21, 2014 he caused a copy of the above:

**MOTION FOR CONSOLIDATION OF MULTIPLE INTER PARTIES**

**PROCEEDINGS WITH CONSENT, WITH CONSENT**

to be served by First Class Mail, postage prepaid on this date to:

Curtis B. Krasik, Esq.  
Christopher M. Verdini, Esq.  
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/s/

Dated: March 21, 2014

By: \_\_\_\_\_  
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